

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

BRANDON LOTTIE, PLAINTIFF,	
v.	Case No. 4:13-cv-458
AUDUBON FINANCIAL BUREAU LLC, and	
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, DEFENDANTS	

COMPLAINT AND JURY DEMAND

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).
2. Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. This action arises out of Defendant Audubon's violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter referred to as "FDCPA"), and the Texas Finance Code § 392.001, et seq.

VENUE

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b), in that Defendant Audubon transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.
5. The Plaintiff resides in this Judicial District.

PARTIES

6. The Plaintiff, Brandon Lottie (“Plaintiff”), is an adult individual residing in Collin County, Texas, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).
7. Defendant Audubon Financial Bureau LLC (“Defendant Audubon”) is a business entity operating from Amherst, New York.
8. Defendant Audubon can be served in the State of Texas via its registered agent, C T Corporation System, at 350 North St. Paul St., Ste. 2900, Dallas, TX 75201.
9. Defendant Travelers Casualty and Surety Company of America (“Defendant Travelers”) is the surety company for the bond Defendant Audubon has on file with the Texas Secretary of State.
10. Defendant Travelers is a foreign entity that can be served in the state of Texas via its registered agent, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, TX 78701-3218.
11. Defendant Travelers is liable for acts committed by Defendant Audubon pursuant to, and to the extent provided by, Chapter 392 of the Texas Finance Code and a bond secured pursuant thereto, as well as any other applicable law.
12. Defendant Audubon is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and Tex. Fin. Code § 392.001(6) and is a “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7).
13. The principal purpose of Defendant Audubon is the collection of debts using the mails and telephone and other means.

14. Defendant Audubon regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another that arose out of transactions in which the money, property or services which are the subject of the transactions are primarily for personal, family or household purposes.

FACTUAL ALLEGATIONS

15. At some time in the past, the Plaintiff allegedly incurred a financial obligation that was primarily for personal, family or household purposes, namely an amount due and owing on a personal account (hereinafter the "Account").

16. The Account constitutes a "debt" as that term is defined by 15 U.S.C. § 1692a(5) and is a "consumer debt" as that term is defined by Tex. Fin. Code § 392.001(2).

17. The Account allegedly went into default with the original creditor.

18. After the Account allegedly went into default, the Account was placed with or otherwise transferred to Defendant Audubon for collection.

19. The Plaintiff disputes the Account.

20. The Plaintiff requests that Defendant Audubon cease all further communication on the Account.

21. Defendant Audubon's collector(s) were employee(s) of Defendant Audubon at all times mentioned herein.

22. Defendant Audubon acted at all times mentioned herein through its employee(s).

23. During the one year prior to the filing of this complaint, Defendant called Plaintiff on multiple occasions.

24. In one such call with Plaintiff, an employee of Defendant Audubon told Plaintiff that Audubon was not trying to collect on the Account, but was, instead, calling to warn the plaintiff that a judicial proceeding had been or soon would be started against Plaintiff.
25. In the call referenced in paragraph 24 above, the employee for Defendant Audubon told Plaintiff that Plaintiff had committed a “major offense” and that the “courts don’t take this lightly.” Plaintiff was also told that Plaintiff “might want to get in touch with an attorney.”
26. The employee for Defendant Audubon also informed Plaintiff that Plaintiff could avoid the impending legal peril by settling out of court.
27. As of the filing of this complaint, the Plaintiff has not been sued on the account which Defendant Audubon was attempting to collect.
28. Defendant Audubon's purpose for calling the Plaintiff was to attempt to collect the Account.
29. In the same call discussed in paragraphs 24-26 above and in other calls with Plaintiff, Defendant Audubon did not provide Plaintiff with meaningful disclosure of Defendant Audubon’s identity and failed to inform Plaintiff that Defendant Audubon was a debt collector.
30. The telephone calls constituted a "communication" as defined by FDCPA § 1692a(2).

31. The only reason that Defendant Audubon and/or representative(s), employee(s) and/or agent(s) of Defendant Audubon made telephone call(s) to the Plaintiff was to attempt to collect the Account.
32. The only reason that Defendant Audubon and/or representative(s), employee(s) and/or agent(s) of Defendant Audubon had telephone conversation(s) with the Plaintiff was to attempt to collect the Account.
33. The only reason that Defendant Audubon and/or representative(s), employee(s) and/or agent(s) of Defendant Audubon left message(s) for the Plaintiff was to attempt to collect the Account.
34. During one or more communications with the Plaintiff in the year prior to the filing of this complaint, while attempting to collect the Account, Defendant Audubon did not provide the language required by 15 U.S.C § 1692e(11) and Tex. Fin. Code § 392.304(5)(B).
35. During one or more communications with the Plaintiff in the year prior to the filing of this complaint, while attempting to collect the Account, Defendant Audubon did not disclose clearly the name of the person to whom the debt has been assigned or is owed when making a demand for money as required by Tex. Fin. Code § 392.304(4).
36. The statements and actions of Defendant Audubon and its representative(s), employee(s) and/or agent(s) constitute illegal communication in connection with debt collection and violate 15 U.S.C. § 1692e(2)&(3)&(5)&(7)&(10)&(11) and Tex. Fin. Code §392.301(2)&(6)&(8) and § 392.304(4)&(5)(A)&5(B)&(8)&(14)&(19).

37. All of the conduct by Defendant Audubon and/or its employees and/or agents

alleged in the preceding paragraphs was done knowingly and willfully.

38. As a consequence of Defendant Audubon's collection activities and

communication(s), the Plaintiff seeks damages pursuant to 15 U.S.C. § 1692k(a)

and Tex. Fin. Code § 392.403.

RESPONDEAT SUPERIOR

39. The representative(s) and/or collector(s) at Defendant Audubon were employee(s)

of Defendant Audubon at all times mentioned herein.

40. The representative(s) and/or collector(s) at Defendant Audubon were agent(s) of

Defendant Audubon at all times mentioned herein.

41. The representative(s) and/or collector(s) at Defendant Audubon were acting

within the course of their employment at all times mentioned herein.

42. The representative(s) and/or collector(s) at Defendant Audubon were acting

within the scope of their employment at all times mentioned herein.

43. The representative(s) and/or collector(s) at Defendant Audubon were under the

direct supervision of Defendant Audubon at all times mentioned herein.

44. The representative(s) and/or collector(s) at Defendant Audubon were under the

direct control of Defendant Audubon at all times mentioned herein.

45. The actions of the representative(s) and/or collector(s) at Defendant Audubon

are imputed to their employer, Defendant Audubon.

46. As a direct and proximate result of the aforesaid actions, the Plaintiff seeks

damages pursuant to FDCPA 1692k(a).

COUNT I: VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

47. The previous paragraphs are incorporated into this Count as if set forth in full.
48. The act(s) and omission(s) of Defendant Audubon and its representative(s), employee(s) and/or agent(s) violated 15 U.S.C. § 1692e(2)&(3)&(5)&(7)&(10)&(11).
49. Pursuant to 15 U.S.C. § 1692k the Plaintiff seeks damages, reasonable attorney's fees and costs.

COUNT II: VIOLATIONS OF THE TEXAS FINANCE CODE

50. The previous paragraphs are incorporated into this Count as if set forth in full.
51. The act(s) and omission(s) of Defendant Audubon and its representative(s), employee(s) and/or agent(s) violated Tex. Fin. Code §392.301(2)&(6)&(8) and § 392.304(4)&(5)(A)&5(B)&(8)&(14)&(19).
52. Pursuant to Tex. Fin. Code § 392.403, the Plaintiff seeks damages, reasonable attorney's fees and costs.

COUNT III – INVASION OF PRIVACY (INTRUSION ON SECLUSION)

53. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, Defendant is liable to the Plaintiff for invading the Plaintiff's privacy (intrusion on seclusion). Defendant intentionally intruded on the Plaintiff's solitude, seclusion, or private affairs, and such intrusion would be highly offensive to a reasonable person.

54. The Plaintiff suffered actual damages as a result of Defendant's intrusion.

JURY TRIAL DEMAND

55. The Plaintiff is entitled to and hereby demands a trial by jury.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiff requests that the Court grant the following:

56. Judgment in favor of the Plaintiff and against Defendant Audubon.

57. Actual damages pursuant to 15 U.S.C. 1692k(a)(1).

58. Statutory damages in the amount of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2).

59. Reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k(a)(3).

60. Damages and reasonable attorney's fees and costs pursuant to Tex. Fin. Code § 392.403.

61. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jeff Wood

Jeff Wood, Esq.

ArkBN: 2006164

103 N. Goliad, Suite 204

Rockwall, TX 75087

TEL: 615-628-7128

FAX: 615-807-3344

EMAIL: jeff@mmlaw.pro

Attorney for Plaintiff

Of Counsel to:

McClendon & Milligan

PO Box 828

Franklin, TN 37065-0828

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Brandon Lottie

(b) County of Residence of First Listed Plaintiff Collin County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jeff Wood
103 N. Goliad, Suite 204
Rockwall, TX 75087 (615) 628-7128

DEFENDANTS

Audubon Financial Bureau, LLC
Travelers Casualty and Surety Company of America

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice		<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 866 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 867 HIA (1395ff)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. sec. 1692Brief description of cause:
defendant committed violations of Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23**DEMAND \$**

25,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

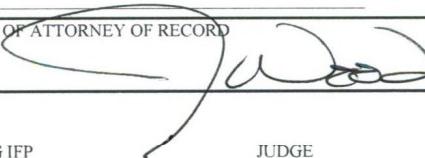
JUDGE

DOCKET NUMBER _____

DATE

8/12/13

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE